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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,762	12/31/2003	Keith A. Etling	038190/269125	9125
67141	7590	08/17/2009	EXAMINER	
ALSTON & BIRD, LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			PICKARD, ALISON K	
			ART UNIT	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

<b>Application No.</b> 10/749,762	<b>Applicant(s)</b> ETLING, KEITH A.	
<b>Examiner</b> Alison K. Pickard	<b>Art Unit</b> 3676	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1)  Responsive to communication(s) filed on 18 May 2009.
- 2a)  This action is **FINAL**.                      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4)  Claim(s) 1,3,5,9-14,25,30-32 and 35-37 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) 25,30-32,35 and 36 is/are allowed.
- 6)  Claim(s) 1,3,5,9-14 and 37 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \*    c)  None of:
1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1, 3, 5, 9-14 and 37 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1 and 9 have been amended to state that attachment portion of the seal is not detached from the surface when the fastener is loosened. There does not appear to be support for this. The specification appears to be silent with respect to what happens to the attachment portion when the fastener is loosened.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 9, 11, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Middione (6,082,240).

Middione discloses a method and apparatus comprising a sealing member 23 and two surfaces (of 48 or 38 or 32 or 16 for example). The surfaces define a receiving aperture as seen

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best in Figure 2. The sealing member includes an attachment portion (e.g. part of 42) fixed to either surface and a seal portion. The seal portion has a deformable segment (e.g. near 43) facing the surfaces. The deformable segment is inserted into the aperture. The sealing member defines an opening (near line 27). A fastener 29 is aligned with the opening and underlies a portion of the sealing member. The fastener can be accessed from the opening. And, when the fastener is loosened, the deformable segment will be disengaged from the aperture. The seal can be disengaged from any of 16, 38, or 32 while maintaining contact with 48. In other words, seal 23 and 48 can be removed together.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Middione in view of Pritchard (2,710,113).

Pritchard teaches coating over a seal and surfaces to further ensure a leak proof seal. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the seal of Middione with a coating to ensure a fluid tight seal for the apparatus.

7. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Middione.

Middione does not disclose the deformable segment is elastomer sponge material. The selection of a known material based on its suitability for its intended use is considered obvious. See *In re Leshin*, 125 USPQ 416 (CCPA 1960). Therefore, it would have been obvious to one of

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ordinary skill in the art at the time the invention was made to modify the deformable segment by making it of elastomer sponge.

8. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Middione.

Middione discloses a fastener 26 through the attachment portion of the seal. Middione does not appear to disclose that the fastener is a rivet. The examiner takes Official Notice that a rivet is a known fastener and is equivalent to a screw or bolt as shown in Middione. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a rivet as the fastener.

9. Claims 1, 3, 5, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Middione in view of Corsover in view of Pritchard.

Middione discloses a method and apparatus comprising a sealing member 23 and two surfaces (of 48 or 38 for example). The surfaces define a receiving aperture as seen best in Figure 2. The sealing member includes an attachment portion (e.g. part of 42) fixed to either surface and a seal portion. The seal portion has a deformable segment (e.g. near 43) facing the surfaces. The deformable segment is inserted into the aperture. The sealing member defines an opening (near line 27). A fastener 29 is aligned with the opening and underlies a portion of the sealing member. The fastener can be accessed from the opening. And, when the fastener is loosened, the deformable segment will be disengaged from the aperture. The seal can be disengaged from any of 16, 38, or 32 while maintaining contact with 48. In other words, seal 23 and 48 can be removed together.

Middione does not appear to disclose a filler. Corsover teaches a sealing element in an aperture defined between two surfaces. Corsover teaches the use of a release material 64 on a

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portion of the sealing element to prevent it from sticking to other components. The material can be considered a “filler” and could be applied to any surface of the apparatus to prevent sticking. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a release material on the seal to prevent it from sticking to other elements. The use of a known technique to improve a similar device yields expected results.

Pritchard teaches coating over a seal and surfaces to further ensure a leak proof seal. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the seal of Middione with a coating to ensure a fluid tight seal for the apparatus.

Regarding claim 37, Middione does not disclose the deformable segment is elastomer sponge material. The selection of a known material based on its suitability for its intended use is considered obvious. See *In re Leshin*, 125 USPQ 416 (CCPA 1960). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the deformable segment by making it of elastomer sponge.

#### ***Allowable Subject Matter***

10. Claims 25, 30-32, 35, and 36 are allowed.

#### ***Response to Arguments***

11. Applicant's arguments filed 5-18-09 have been fully considered but they are not persuasive.

The rejection using Middione has been maintained for some of the claims. As stated above, the seal can be disengaged from any of elements 16, 32, and 38 while kept in contact with 48 to meet the new limitation. Also as noted above, it is unclear if there is support for this new limitation. The claims have been examined as best understood.

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***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alison K. Pickard whose telephone number is 571-272-7062. The examiner can normally be reached on M-F (9-5).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer Gay can be reached on 571-272-7029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alison K. Pickard/  
Primary Examiner, Art Unit 3676

AP